

## § 30.210

## 20 CFR Ch. I (4–1–08 Edition)

shows the relationship between the injury, illness, impairment or disability and the beryllium sensitivity or established chronic beryllium disease. Neither the fact that the injury, illness, impairment or disability manifests itself after a diagnosis of beryllium sensitivity or established chronic beryllium disease, nor the belief of the claimant that the injury, illness, impairment or disability was caused by the beryllium sensitivity or established chronic beryllium disease, is sufficient in itself to prove a causal relationship.

### ELIGIBILITY CRITERIA FOR CLAIMS RELATING TO RADIOGENIC CANCER UNDER PARTS B AND E OF EEOICPA

#### **§ 30.210 What are the criteria for eligibility for benefits relating to radiogenic cancer?**

(a) To establish eligibility for benefits for radiogenic cancer under Part B of EEOICPA, an employee or his or her survivor must show that:

(1) The employee has been diagnosed with one of the forms of cancer specified in § 30.5(ff) of this part; and

(i) Is a member of the Special Exposure Cohort (as described in § 30.214(a) of this subpart) who, as a civilian DOE employee or civilian DOE contractor employee, contracted the specified cancer after beginning employment at a DOE facility; or

(ii) Is a member of the Special Exposure Cohort (as described in § 30.214(a) of this subpart) who, as a civilian atomic weapons employee, contracted the specified cancer after beginning employment at an atomic weapons employer facility (as defined in § 30.5(e)); or

(2) The employee has been diagnosed with cancer; and

(i)(A) Is/was a civilian DOE employee who contracted that cancer after beginning employment at a DOE facility; or

(B) Is/was a civilian DOE contractor employee who contracted that cancer after beginning employment at a DOE facility; or

(C) Is/was a civilian atomic weapons employee who contracted that cancer after beginning employment at an atomic weapons employer facility; and

(ii) The cancer was at least as likely as not related to the employment at the DOE facility or atomic weapons employer facility; or

(3) The employee has been diagnosed with an injury, illness, impairment or disease that arose as a consequence of the accepted cancer.

(b)(1) To establish eligibility for benefits for radiogenic cancer under Part E of EEOICPA, an employee or his or her survivor must show that:

(i) The employee has been diagnosed with cancer; and

(A) Is/was a civilian DOE contractor employee or a civilian RECA section 5 uranium worker who contracted that cancer after beginning employment at a DOE facility or a RECA section 5 facility; and

(B) The cancer was at least as likely as not related to exposure to a toxic substance of a radioactive nature at a DOE facility or a RECA section 5 facility; and

(C) It is at least as likely as not that the exposure to such toxic substance(s) was related to employment at a DOE facility or a RECA section 5 facility; or

(ii) The employee has been diagnosed with an injury, illness, impairment or disease that arose as a consequence of the accepted cancer.

(2) Eligibility for benefits for radiogenic cancer under Part E in a claim that has previously been accepted under Part B pursuant to the Special Exposure Cohort provisions is described in § 30.230(a) of these regulations.

#### **§ 30.211 How does a claimant establish that the employee has or had contracted cancer?**

A claimant establishes that the employee has or had contracted a specified cancer (as defined in § 30.5(ff)) or other cancer with medical evidence that sets forth an explicit diagnosis of cancer and the date on which that diagnosis was first made.

#### **§ 30.212 How does a claimant establish that the employee contracted cancer after beginning employment at a DOE facility, an atomic weapons employer facility or a RECA section 5 facility?**

(a) Proof of employment by the DOE or a DOE contractor at a DOE facility,

or by an atomic weapons employer at an atomic weapons employer facility, or at a RECA section 5 facility, may be made by the submission of any trustworthy records that, on their face or in conjunction with other such records, establish that the employee was so employed and the time period(s) of such employment.

(b)(1) Except as provided in paragraph (b)(2) of this section, if the evidence shows that exposure occurred while the employee was employed at a facility during a time frame that is outside the relevant period indicated for that facility, OWCP may request that DOE provide additional information on the facility. OWCP will determine whether the evidence of record supports enlarging the relevant period for that facility.

(2) OWCP may choose not to request that DOE provide additional information on an atomic weapons employer facility that NIOSH reported had a potential for significant residual radiation contamination in its report dated October 2003 and titled "Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities," or any update to that report, if the evidence referred to in paragraph (a) of this section establishes that the employee was employed at that facility during a period when NIOSH reported that it had a potential for significant residual radiation contamination.

(c) If the evidence shows that exposure occurred while the employee was employed by an employer that would have to be designated by DOE as an atomic weapons employer under section 7384l(4) of the Act to be a covered employer, and that the employer has not been so designated, OWCP will deny the claim on the ground that the employer is not a covered atomic weapons employer.

(d) Records from the following sources may be considered as evidence for purposes of establishing employment or presence at a covered facility:

(1) Records or documents created by any federal government agency (including verified information submitted for security clearance), any tribal government, or any state, county, city or

local government office, agency, department, board or other entity, or other public agency or office.

(2) Records or documents created as a byproduct of any regularly conducted business activity or by an entity that acted as a contractor or subcontractor to the DOE.

**§ 30.213 How does a claimant establish that the radiogenic cancer was at least as likely as not related to employment at the DOE facility, the atomic weapons employer facility, or the RECA section 5 facility?**

(a) HHS, with the advice of the Advisory Board on Radiation and Worker Health, has issued regulatory guidelines at 42 CFR part 81 that OWCP uses to determine whether radiogenic cancers claimed under Parts B and E were at least as likely as not related to employment at a DOE facility, an atomic weapons employer facility, or a RECA section 5 facility, as appropriate. Persons should consult HHS's regulations for information regarding the factual evidence that will be considered by OWCP, in addition to the employee's radiation dose reconstruction that will be provided to OWCP by HHS, in making this particular factual determination.

(b) HHS's regulations satisfy the legal requirements in section 7384n(c) of the Act, which also sets out OWCP's obligation to use them in its adjudication of claims for radiogenic cancer filed under Part B of the Act, and provide the factual basis for OWCP to determine if the "probability of causation" (PoC) that an employee's cancer was sustained in the performance of duty is 50% or greater (*i.e.*, it is "at least as likely as not" causally related to employment), as required under section 7384n(b).

(c) OWCP also uses HHS's regulations when it makes the determination required by section 7385s-4(c)(1)(A) of the Act, since those regulations provide the factual basis for OWCP to determine if "it is at least as likely as not" that exposure to radiation at a DOE facility or RECA section 5 facility, as appropriate, was a significant factor in aggravating, contributing to, or causing the employee's radiogenic cancer claimed under Part E. For cancer claims under Part E, if the PoC is less